IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7449 OF 2004

R.B.Ghavate .. Petitioner

Versus

State of Maharashtra & Ors. .. Respondents.

Mr.V.P.Sawant for petitioner

Mr.P.M.Patil, A.G.P. for State.

CORAM : A.P.SHAH AND

S.C.DHARMADHIKARI, JJ.

DATE : 18TH OCTOBER 2004.

P.C.

1. Rule. Respondents waive service. By consent, rule made returnable forthwith.

2. In the year 1999 an auction was held by the office of respondent No.2 for allotment of

mining rights for the year 1999-2000 in respect of plot at Mauje Shani Panavatha, Taluka Shirur, Dist. Pune. Petitioner's bid at Rs.3,48,000/- was accepted and the contract was awarded to the petitioner. It appears that there was not enough sand available at the said plot and the petitioner was able to lift only a negligible quantity of sand. Petitioner, therefore, requested the authorities for allotment of alternate plot as the petitioner had already deposited substantial amount with the State Government. However, the request of petitioner for allotment of alternate site was turned down. Petitioner, therefore, filed W.P. 724 of 2002 challenging the decision of authorities refusing to allot alternate plot. The writ petition was disposed of by an order dated 9th April 2002 giving liberty to petitioner to approach theconcerned authorities for allotment of alternative plot. Pursuant to the order passed by this Court, petitioner again approached the authorities and after considering the report of the Tahsildar, that there was no sand available at Shani Panawatha, respondents decided to allot alternate plot to the petitioner at Mouje

Shirapur. The allotment was accordingly made at Mouje Shirapur till 31st July 2004 on the condition that petitioner should pay the difference of Rs.2,49,500/- calculated at the then prevailing rate for the balance sand. Accordingly petitioner deposited the amount of Rs.2,49,000/- and he was put in possession of the plot at Mauje Shirapur. Petitioner extracted sand at the new site for the entire period of contract. After expiry of the contract period, petition again approached the authorities for allowing him to extract the sand from the said site or allow him to use alternate site. This request was made on the basis that petitioner was unable to extract sand due to flooding of river water. As the request of petitioner was not acceeded to, petitioner has approached this Court under Article 226 of the constitution of India.

3. Learned Counsel appearing for petitioner made a two fold submission. First he contended that since petitioner was unable to extract the sand as per the contract, he ought to have been given continuation or in any event, alternative plot ought to have been allotted to him. This is

disputed by the A.G.P. Learned A.G.P. submitted that petitioner is trying to get the continuation of contract by raising flimsy excuses. We are inclined to agree with the learned A.G.P. In any event, the question as to whether the petitioner had extracted sand as per the contract or not is an issue which cannot be gone into in writ jurisdiction under Article 226 of the Constitution. Therefore, the prayer for continuation of the contract / allotment of alternative plot must be rejected.

4. The second submission of the learned Counsel for petitioner is that the G.R. dated 15th January 2003 prescribing higher rates cannot be made applicable retrospectively to the contract which was expired in 1999 as the alternate plot was allotted to the petitioner as he could not extract sand to the fullest at the original site. In a similar case, W.P.1631 of 2002 (Arvind Sahebrao Damdhere) decided on 12th April 2002) the Bench presided over by Palshikar, J. has held that the Government Resolution cannot be made applicable retrospectively. The same view is taken by the Division Bench of this

Court in the case of Dhananjay G. Vashimbekar Vs. State of Maharashtra & Ors. in W.P. No.5700 of 2004 decided on 2nd August 2004. Therefore to that extent, petitioner is entitled to refund of differential amount. We accordingly direct the State Government to refund Rs.2,49,000/- recovered from petitioner on the basis of G.R. dated 15th January 2003. Amount to be refunded within a period of two months from today. Petition is accordingly disposed of.

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